

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 662 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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JAYSHRIBEN WD/O.NIR ALIAS      NIRANJAN JASBHAI PATEL

Versus

AMRATLAL GHISALAL  
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Appearance:

MR DF AMIN for Petitioners  
NOTICE SERVED for Respondent No. 1  
MR RAJNI H MEHTA for Respondent No. 2, 3  
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CORAM : MR.JUSTICE H.R.SHELAT  
and  
MR.JUSTICE H.H.MEHTA

Date of decision: 04/04/2000

ORAL JUDGEMENT : (Per: H.R. Shelat, J.)

This appeal is preferred for realisation of disallowed claim of compensation arising out of the motor

accident that took place on 8th May 1982 at 8.30 a.m. on Vadodara-Halol Road.

2. Niranjambhai Jashbhai Patel, who lost the life in motor accident, was highly qualified entrepreneur. He had obtained B.Sc. degree from Bombay University and had gone to America in 1963 for higher studies. From America he acquired the degree of BS & MS Metallurgical Engineering and also secured several certificates in several short courses in Foundry Technology and Management Techniques. From November 1966 to November 1967, he had served the Union Carbide Ltd in America and thereafter from December 1967 to June 1968 he was serving in Microwave Corporation. From June 1968 to August 1969 he was serving in Agro Tools Dye Corporation and from December 1969 to October 1976 he was serving in Westing House Electrical Corporation. He was drawing handsome salary. Lastly he was drawing 23600 dollars per year by way of salary. He being a highly educated technologist got the chances to have excellent jobs and because of services in several fields in America he acquired vast experience. He then decided to come back to India and render his services for the well being of the people in India. After returning to India he prepared a project for setting up an industry to manufacture investment casting foundry and actually started the industry in the name and style 'Astro Age Cast Tech (P) Limited in 1978. The foundry started production in 1980 but the beginning was not encouraging and in 1982 the factory had to face a retreat. Niranjambhai was having 2497 shares of the company he has established out of 2550 shares. He was therefore elected as the Managing Director of the company. The company had provided the car so that he could render the services efficiently & promptly employing his experience and making best use of his capacities as well as ability. The factory was within the local limits of Halol. Hence daily from Baroda he was going to the factory premises for attending his work. On 8th May 1982 in the morning when he was going to his factory driving the car the truck No. CPO 8201 driven by the respondent No.1 came from the opposite direction. The respondent No.1 was driving the truck rashly and negligently endangering the human life. As he was rash and negligent in driving the truck he lost the control and collided against the front part of the car driven by Niranjambhai, as a result Niranjambhai sustained serious injuries to which he succumbed. The appellants, who are the heirs and legal representatives of deceased Niranjambhai, filed Motor Accident Claim Petition No. 407 of 1982 in the Motor Accident Claims Tribunal (Main) at Vadodara for a compensation of Rs. 15,00,000/-

against the respondent No.1 the driver of the truck, the respondent No.2 the owner of the truck, and respondent No.3 the insurer of the truck. The then learned Chairman of the Tribunal, hearing the parties, awarded the compensation of Rs. 5,81,000/- together with interest thereon at the rate of 6% p.a. from the date of the petition till payment and also the costs declaring the judgment and award on 22nd July 1985. Being aggrieved by the award, the appellants have preferred this appeal for the claim which is not allowed by the Tribunal.

3. At the time of hearing, the learned advocate representing the appellants made it clear that the appellants were confining their claim to Rs. 1,40,000/= in appeal, and not the whole of the portion disallowed by the learned Judge of the Tribunal. According to him, the datum figure arrived at by the Tribunal was very low. No doubt, at the time of the accident deceased Niranjanbhai was being paid Rs. 3,000/= per month as his salary, but he would have been paid in future more salary because by passage of time the company would have flourished. The Tribunal therefore ought to have assessed the monthly income of more than Rs. 6,000/= and assessed the compensation. The deceased was also provided with the car. The appellants were therefore availing of the car for their conveyance and that facility is also now lost which ought to have been considered while assessing the datum figure for awarding the compensation under the head "Loss of Dependency". The company was also paying several perks which the Tribunal ought to have considered. It is thus the submission of the learned advocate that had the Tribunal considered the future income and other benefits Niranjanbhai was enjoying, or would have enjoyed in future, the compensation would have come even to rupees 9 to 10 lakhs, but in the appeal over and above the amounts awarded the appellants would feel satisfied if Rs. 1,40,000/= are awarded more.

4. Whenever the Tribunal has to assess the compensation in case of the death of the bread-earning member in the motor accident, the help being extended by the deceased to the family has to be assessed, and if with certainty the future help can be assessed, the same also can be taken into account. For assessing the help to the family, one has to find out from the materials on record what the income of the deceased was and what he would have contributed to the well-being of his family. Admittedly, at the time of accident deceased Niranjanbhai was being paid Rs. 3,000/= per month as his salary. He was also paid Rs. 7,100/= per year as House Rent Allowance, Rs. 1,000/= per year as electric bill

charges, Rs. 144/= per year as cooking gas allowance and during the last year he was paid Rs. 18,850/= per year towards the petrol and other expenses of the car. From such facts stated by the appellant No.1 in her evidence, it follows that in all per year the deceased was getting Rs. 75,000/= but for determining his actual income, we cannot ignore the income-tax returns lastly he filed because that can be considered to be the decisive factor for the family may not have at times the real idea about the actual income of the bread-earning member. In the case on hand, the income-tax return for the financial year 1981-82 and assessment year 1982-83 is produced at Ex.58. As per that return deceased Niranjambhai was getting Rs. 44,247/= per year as his salary and Rs. 8,184/= by way of interest on shares and other deposits and no other income under any other head. He was thus getting Rs. 52,431/= per year and was paying the income tax of Rs. 5,324/=. He was therefore in all getting Rs. 41,107/= as his salary per year.

5. As stated above, his future income which is certain cannot be ignored. By passage of time he would have obtained the increments and also the rise in pay-structure because of the upward revision of the pay-scales which often we find in different fields inclusive of private sectors. He was highly qualified person as stated above and therefore his salary would have reached to the handsome level. At the time of incident, he was aged 41 and he would have served the company at least upto the age of 65. He would have, therefore, served the company for about 24 years. Considering such facts, we assess his yearly income at Rs. 75,000/=.

6. Out of his such income, he must have spent on himself for his requirement. Considering his life-style, he must have spent at least Rs. 25,000/= for his personal requirements over and above the other facilities he was enjoying from the company. He must have therefore helped the family namely the appellants by contributing Rs. 50,000/= per year. The said amount is to be multiplied adopting the just and fair multiplier. The Tribunal has adopted 12 multiplier which is, in our view, quite just and proper looking to the age of the deceased at the time of accident and the years for which he would have helped the family. If the yearly help is multiplied by 12, the amount of dependency comes to Rs. 6,00,000/=. Over and above such amounts, the claimants(appellants) are also entitled to the conventional amount of Rs. 20,000/= under the head 'Loss to the estate of the deceased'. In all therefore the appellants are entitled

to Rs. 6,20,000/= by way of compensation. The Tribunal has awarded Rs. 5,81,000/=. The claimants are, therefore, entitled to Rs. 39,000/= more, and not Rs. 1,40,000/= they have claimed.

7. The Tribunal has awarded interest at the rate of 6% p.a. It is therefore the contention of the learned advocate for the appellant that at least on the additional amount, rate of interest must be higher than what has been awarded by the Tribunal. In our view the rate of interest must be commensurating with the economic policy of the Government or the policy adopted by the Reserve Bank of India and as per that policy the interest being paid by the banks on fixed deposits. At present the maximum interest that is being paid by the banks on fixed deposits is 10.5% p.a., which is the maximum rate. In this case, therefore, the claimants are entitled to 10% interest on the additional amount they are to get under this order. On no other ground, the award is assailed. In view of what we have discussed hereinabove, the cross-objections filed by opponents Nos. 2 & 3 cannot be allowed whereby the respondents have come forward with the case that the Tribunal ought to have awarded less than Rs. 5,81,000/=:, namely Rs. 2,81,000/=. .

8. For the aforesaid reasons, the appeal is required to be partly allowed. The same is allowed accordingly. The award passed by the Tribunal is modified to the effect that instead of Rs. 5,81,000/=:, the respondents Nos. 1, 2, & 3 shall pay in all Rs. 6,20,000/=:, less already paid, i.e., they shall jointly & severally pay additional amount of Rs. 39,000/= together with interest at the rate of 10% p.a., thereon from the date of the petition till payment and shall also pay the costs in proportion. The respondents shall pay the additional amount together with interests and costs within the period of 6 weeks from today.

9. The Cross Objections filed by respondents No. 2 & 3 are hereby dismissed.

rmr. ....